

unlimited duration, as impermissible CMRS entry regulation.³³

While NAB and MSTV expect that the Commission will receive substantial evidence of the nature and extent of difficulties faced by broadcasters in placing, constructing and modifying broadcast transmission facilities,³⁴ the information presently before the Commission establishes the following:

1. States and local governments often impose regulatory requirements on the construction of communications facilities which are inconsistent with federal regulatory requirements.
2. States and local governments often impose regulatory requirements that overlap with issues which are comprehensively regulated by the federal government.
3. States and local governments routinely impose procedural delays and moratoria on the siting of new communications facilities.

³³ Commission Seeks Comment on Petition for Declaratory Ruling of the Cellular Telecommunications Industry Association, *Public Notice*, DA 96-2140 (Released: Dec. 18, 1996).

³⁴ Regardless of the number of comments which are submitted by individual broadcasters, it is clear that the Commission will not have a complete record in this proceeding concerning state and local zoning and land use restrictions on broadcast transmission facility siting and construction. NAB and MSTV have been advised by many broadcasters that they are reluctant to speak publicly concerning ongoing disputes with states and local governments because of concern that this would make a bad situation worse. In this regard, the politics of dealing with states and local governments cannot be discounted. It should be kept in mind that participation by individual broadcasters in this proceeding does not occur in a vacuum, and there may be business consequences for broadcasters that speak out in this forum.

It should be kept in mind that this record has been constructed in an environment which predates the implementation of DTV service. These difficulties will increase exponentially as broadcasters begin the construction required by and associated with the transition to DTV.

CONCLUSION

For the reasons expressed herein, NAB and MSTV respectfully request that the Commission adopt the proposed preemption rule set forth as Appendix B in the *Notice of Proposed Rule Making*.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

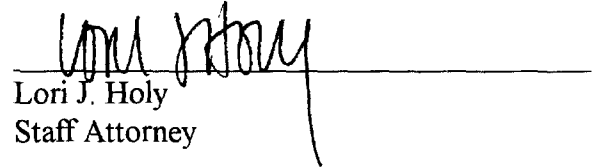
1771 N Street, N.W.
Washington, D.C. 20036



Henry L. Baumann
Executive Vice President and
General Counsel



Barry D. Umansky
Deputy General Counsel



Lori J. Holy
Staff Attorney

**ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION**

1776 Massachusetts Avenue, Inc.
Washington, D.C. 20036



Victor Tawil
Senior Vice-President

Of Counsel:

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Post Office Box 1800
Raleigh, North Carolina 27602

October 30, 1997

DECLARATION

I, Michael D. Hill, hereby declare, under penalty of perjury, as follows:

1. I am employed as Vice President/General Counsel of Capitol Broadcasting Company, Inc. ("CBC").

2. CBC is the licensee of Television Station WRAL-TV (CBS) which operates on Channel 5 at Raleigh, North Carolina. In addition, CBC has an experimental authorization from the FCC which permits it to test a new digital television service, WRAL-HD, on Channel 32 at Raleigh.

3. CBC, in anticipation of the conversion to digital television, is in the process of enlarging its studio building and relocating its 300 foot self-supporting studio transmitter link tower ("STL tower") which is located at the WRAL studios on Western Boulevard in Raleigh. WRAL transmits its signal by microwave link from its studios in Raleigh to its 2,000 foot transmission tower located some 10.56 miles away at Auburn, North Carolina. CBC needs to relocate its existing STL tower some 170 feet from one side of its studio building to another in order to allow for expansion of the existing studio space.

4. CBC filed an application for a special use permit with the City of Raleigh on August 1, 1997. The application was complete and ready for action when filed. The City staff has recommended approval of the permit. CBC is not aware of any objection by any member of the public or any adjacent landowner. Indeed, the adjacent landowner located nearest to CBC has indicated it has no objection to the issuance of the permit. The special use permit application, a copy of which is attached as Exhibit 1, details CBC's compliance with the local ordinance governing such matters. Also attached as Exhibit 2 is a copy of the recommendation of the City Planning Director that the special use permit be granted.

5. The application was scheduled for hearing by the Raleigh City Council three times -- on September 2, 1997, September 16, 1997 and October 8, 1997. Each time, the City Council has refused to hold the required evidentiary hearing on the application.

6. Initially, it is my understanding that the City Attorney advised the Council that they should not hear the matter without a letter from CBC waiving any conflict of interest that might appear by virtue of the fact that four members of the City Council are defendants in a civil action alleging that certain members of the Council violated the state open meetings law in connection with an unrelated matter. CBC, along with the state broadcast association, state press association, the local daily newspaper and other local television stations, are parties plaintiff in that litigation. That case is presently pending before the North Carolina Court of Appeals. CBC promptly provided the requested letter waiving any conflict of interest. A copy of the letter is attached as Exhibit 3.

7. Nonetheless, and notwithstanding that CBC's application is complete and ready for action, the hearing has now been continued twice. I have been informed by representatives of the City staff, and believe that the members of the Council who are defendants in the unrelated litigation, have purported to justify this inaction by indicating that they will not provide CBC with a hearing on its application unless CBC secures from the other plaintiffs, in the unrelated case, a letter waiving any purported conflict of interest in the special use permit hearing — despite the fact that none of those other plaintiffs have any interest whatsoever in the special use permit application. This request is without legal basis. It is unnecessary. Such a request may or may not be granted by the other plaintiffs in the unrelated litigation since they are business competitors of CBC's.

8. The relocation of CBC's STL tower has been delayed, and additional costs incurred, as a result of this attempt to impose additional, unnecessary requirements on CBC. If CBC is forced to resort to judicial action, CBC may be further delayed in its efforts to construct its new studio additions and renovations which are a part of the company's efforts to promptly roll out its new DTV facilities. In addition, CBC's costs will have been increased for no legitimate reason. CBC would, in my opinion, be entitled to a writ of mandamus from a court of competent jurisdiction to compel a hearing on its application.

9. As of this writing, CBC does not know when, or if, it will be granted a hearing on its special use permit application.

Executed under penalty of perjury this 30th day of October, 1997.



Michael D. Hill

EXHIBIT 1

**APPLICATION FOR
SPECIAL USE PERMIT**



SPECIAL USE PERMIT APPLICATION
FOR PUBLIC HEARING
AND APPROVAL BY THE RALEIGH CITY COUNCIL

Section A
SUBMITTAL CHECKLIST

PLEASE INCLUDE ALL OF THE FOLLOWING (CHECK OFF). If any information is missing from the application package, you may be asked to complete the application and re-submit on the next review cycle, so please check the list below carefully before you submit:

- ☐ **THREE SETS OF PRELIMINARY PLANS.** Maximum sheet size shall be 36" X 44". Plans must be to engineering scale (1" = 20', 1" = 30', etc.). Preliminary plans do not need an engineer or landscape architect's seal. Information to be shown on this plan should relate to the findings that the Council will need to make as noted in Section 10-2145 of the Raleigh City Code.
- ☐ **CITY OR COUNTY PROPERTY MAP** with parcels included in the site plan clearly marked. An excerpt of a property map is acceptable, but the map number must appear on the excerpt. This information is available from Wake County GIS or from the City of Raleigh Planning Department.
- ☐ **\$200 FILING FEE.** Check may be made out to the City of Raleigh. Payments may be made by cash or by check, but not by credit cards.
- ☐ **THREE COPIES OF THIS APPLICATION FORM** completed, signed, by the property owner or his / her agent, and notarized.

REQUIRED, BUT OFTEN MISSING INFORMATION. PLEASE MAKE SURE TO INCLUDE THE FOLLOWING:

- ☐ **VICINITY MAP.** Please include with plan documents.
- ☐ **CORRECT PARCEL IDENTIFICATION NUMBER (PIN).** Call Wake Co. Geographic Information Services at 855-6360. If there is ANY question about the parcel identifier. **THIS IS VERY IMPORTANT!** Incorrect PIN can cause the application to be rejected and re-submitted at the next submittal date.
- ☐ **OWNER SIGNATURE.** See Page 4 of this application. This signature must be notarized.
- ☐ **COMPLETE LIST OF PROPERTY OWNERS** adjacent to, in front of and behind the subject property, including properties across public rights-of-way. When unsure of whether to include adjacent properties, err on the side of including too many. If advertising is insufficient, the Special Use Permit may be invalidated.

Section B

SUMMARY INFORMATION (SHOW ON PLAN ALSO)

DEVELOPMENT NAME: WRAL-TV

LOCATION: Western Boulevard

WAKE COUNTY PROPERTY IDENTIFICATION NUMBER(S):

P.I.N. 0793.07-68-6726

P.I.N.

P.I.N.

P.I.N.

P.I.N.

P.I.N.

P.I.N.

ZONING DISTRICT (Include Overlay Districts): Industrial-2

OWNER / DEVELOPER: Capitol Broadcasting Company, Inc.

ADDRESS: P.O. Box 12000 Raleigh, NC 27605

TELEPHONE: 821-8500 FAX: 821-8554

REPRESENTATIVE: Envirotek, Inc.

ADDRESS: 1111 Oberlin Road, Raleigh, NC 27605

TELEPHONE: 919-832-6658 FAX: 919-839-2255

CONTACT PERSON Ron Hendricks PHONE _____ FAX _____

This request is for a special use permit for the following:

- ☐ Additional floor area ratio (F.A.R.) allowances for office buildings in Office and Institutional-1 and 2 Districts.
- ☐ Additional residential density in Office and Institutional-1, Office and Institutional-2, Shopping Center and Thoroughfare Districts.
- ☐ Additional density, conversions of buildings to dwellings, net lot area reduction for dwellings, and housing within underlying industrial zoning districts in Downtown Residential Housing and Pedestrian Overlay Districts.
- ☐ Correctional / Penal Facility
- ☐ Hotel and motel in Office and Institutional-2 District.
- ☐ Interim use in the Residential Business District within a redevelopment area.
- ☐ More than eight (8) dwelling or rooming units per floor for multifamily and group housing structure, townhouse, congregational care and congregational living structures, life care communities and condominium developments.
- ☐ Outdoor stadium, outdoor theater, outdoor race track, of more than two hundred and fifty (250) seats, and outdoor movie theatres.
- ☐ Outdoor storage for inoperable vehicles
- ☐ Outdoor storage yards
- ☐ Parking facility - off-site, in a Residential Business District for special use residential housing projects.
- ☐ Parking facility - off-site, for a residential institution in residential zoning districts.
- ☐ Recreational use of a governmental entity and not for profit private recreational camp, in a primary reservoir watershed protection area.
- ☐ Recreational use restricted to membership - not for profit, in a primary reservoir watershed protection area.
- ☐ Shopping centers and shopping areas in Thoroughfare and Industrial-1 and 2 Districts that are located within four hundred (400) feet of any major thoroughfare or major access corridor.
- ☐ Special Residential-30 residential density greater than twenty (20) dwelling units per net acre or three (3) or more dwelling units on a lot.
- ☒ Telecommunication tower.
- ☐ Thoroughfare protective yard reductions for projects in Thoroughfare Districts traversed by more than one (1) mile of continuous public thoroughfare.

THE ABOVE-NAMED OWNERSHIP OF THIS PROPERTY IS EVIDENCED BY DEED FROM CBC Real Estate Company, Inc.

AND RECORDED IN THE WAKE COUNTY REGISTRY, BOOK 3066 PAGE 069

CITY USE ONLY	
RECEIPT NUMBER	_____
FILE NUMBER	_____
PLANNING DISTRICT	_____
CAC DISTRICT	_____
HARBOR DATE	_____

The zoning ordinance imposes the following **SPECIFIC REQUIREMENTS** before a special use permit may be issued. . Please address each of the specific requirements noted in Code Section 10-21.46 in the area below as it relates to your request. (The staff can assist the Applicant in listing the specific requirements). The Applicant should be prepared to demonstrate that, if the land is used in a manner consistent with the plans, specifications, and other information presented to City Council, the proposed use will comply with each of the following specific requirements:

See attached list of responses to the specific requirements.

PROPERTY ID NO.	PROPERTY OWNER	MAILING ADDRESS	ZIP CODE
0793.07-68-6383	CBC Real Estate Company Inc	P.O. Box 12000 Raleigh	27605
0793.07-68-7563	CBC Real Estate Company Inc	711 Hillsborough St. Raleigh	27603
0793.07-68-9600	Capital Broadcasting Co. Inc 662 WRAL-TV	P.O. Box 12000 Raleigh	27605
0793.07-68-9702	Ranson J. & Eula W. Fort	608 Nazareth St. Raleigh	27606
0793.07-68-8799	Annie Hicks	606 Nazareth St. Raleigh	27606
0793.07-68-1398	Roman Catholic Diocese c/o P. Joseph Gossman Bishop	300 Cardinal Gibbons Dr. Raleigh	27606
0794.19-50-7874	State of North Carolina	P.O. Box 10096 Raleigh	27605
0793.07-78-0787	Marion Grant & Mertie Batby	2525 Western Blvd. Raleigh	27606

**RESPONSE TO THE SPECIFIC REQUIREMENTS
OF CODE SECTION 10-2145 FOR THE
SPECIAL USE PERMIT REQUEST OF
CAPITOL BROADCASTING COMPANY INC.
FOR THE REPLACEMENT AND RELOCATION OF
THE EXISTING TELECOMMUNICATIONS TOWER AT WRAL-TV**

4 August 1997
CBCTVT

1. See Attachment A regarding radio/television reception.
2. The height of the tower is 300 feet, therefore it does not exceed the 510 foot limit in the ordinance.
3. See Attachment A regarding FAA lighting standards.
4. (a) A minimum (20) foot yard setback is provided (see Preliminary Site Layout).
(b) & (c) The tower will be located more than one hundred percent of the tower height (300') from any lot that is zoned or developed residential.
5. An eight (8) foot high fence will surround the base of the tower and guy wires. Currently, a chain link fence surrounds the area where the tower will be located. The existing fence has a height of six (6) feet in two (2) locations and eight (8) feet in another location. The fence will be appropriately screened with plant material to achieve the specified standard with three years (see Preliminary Site Layout).
6. A twenty (20) feet wide street protective yard will be located along a portion of the right-of-way of Western Boulevard (see Preliminary Site Layout). A transitional protective yard will be located along the property line that is shared with the residentially zoned properties to the east (PIN# 0793.07-68-8799, 0793.07-68-9702 and 0793.07-68-9600). Along with these plantings, the existing development shall serve as a sufficient alternate method for the protective yards. (see Preliminary Site Layout)
7. See Attachment A
8. See Attachment A
9. The tower will not be located on property that is zoned residential.
10. The tower is not located within a Historic Overlay District or a Metro Park Protection Overlay District. There is not a similar tower which was constructed after the effective date of the current ordinance within 1000 feet of the new tower location.
11. The tower exceeds one hundred eighty (180) feet and is engineered and constructed to accommodate a minimum of two (2) additional telecommunication users. (See Attachment A)
12. This location is not in a residential district therefore the residential appearance provision for the buildings does not apply.
13. The associated buildings for the tower are not located in a residential district.
14. This special use request is strictly for the purpose of replacing and relocating the existing tower to a new location approximately 100 feet away. Therefore, the use will not change and will not be injurious to property or improvements in the affected area.

**Attachment A
Capitol Broadcasting Company, Inc.
Replacement and Relocation of
Existing Telecommunications Tower at WRAL-TV**

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, N.C. 27606

FRED BARBER
Vice President, Television
(919) 871-6575
Fax (919) 871-4598

July 31, 1997

City of Raleigh Planning Department
P. O. Box 590
Raleigh, NC 27602

Subject: Application for permit for relocation of WRAL-TV Studio Tower
on Western Boulevard. In response to questions numbers 1, 3, 7 and 8
of the Raleigh City Code for Telecommunications towers.

To Whom It May Concern:

This letter serves to state that the proposed tower for WRAL-TV News Operations will not interfere with normal radio frequencies and television transmissions in the vicinity.

In response to question number "3," this letter serves to state that tower lighting will not exceed the Federal Aviation Administration (FAA) minimum standards for red obstruction lighting systems contained in the Advisory Circular No. 70/7460-1F dated 27 September, 1978.

In response to question "7," the output power from the tower will not exceed federally approved levels for exposure to electronic magnetic force (EMF).

In response to question number "8," the WRAL tower is designed to accommodate additional users. Should the city of Raleigh decide to relocate its telecommunications systems, the proposed tower will be able to accommodate a reasonable number of facilities.

We understand that this letter is submitted to fulfill the requirements of the Raleigh City Code, that it becomes an official part of the tower application materials, and that it shall remain in the permanent files.

If you need additional information, please contact me at your earliest convenience.

Sincerely,



Fred Barber

FB:jg

I hereby certify that the information contained herein is true and complete; and I understand that if any item is found to be otherwise after evidentiary hearing before the City Council, that the action of the Council may be invalidated.

Signature of applicant

John M. Brennan, Capitol Broadcasting Company, Inc.

Date 8/1/97

Representative

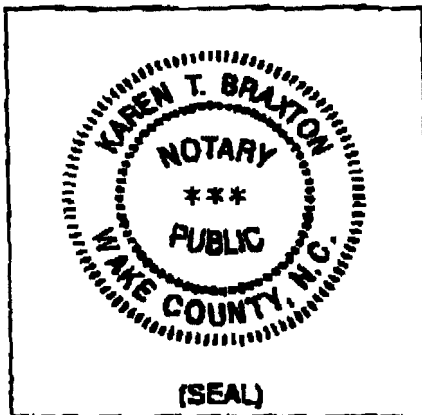
Ben Taylor, Envirotek, Inc.

Date 1 AUG 97

STATE OF NORTH CAROLINA
COUNTY OF

I, Karen T. Braxton, a Notary Public do hereby certify that John M. Brennan personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

This the 1st day of August, 19 97



[Signature]
Notary Public

My Commission Expires: May 4, 2000

EXHIBIT 2

**RECOMMENDATION OF THE
CITY PLANNING DIRECTOR**

CITY OF RALEIGH
INTER-OFFICE CORRESPONDENCE

TO: City Manager

ROOM: 228

FROM: Planning Director

DATE: Aug 22, 1997

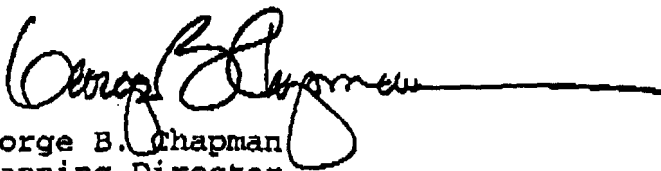
SUBJECT: SU-10-97: Telecommunication Tower, WRAL Television Site
Agenda Item, September 2, 1997.

MESSAGE:

A Special Use Permit application has been received from the following:

SU-10-97: Telecommunication Tower, WRAL Television Site
Special Use Permit request from WRAL Television to construct a 300 foot lattice construction telecommunication tower on the property owned by WRAL Television/ Capitol Broadcasting Company with an existing land use of television broadcasting. Located at 2619 Western Boulevard in the Southwest Planning District on a tract that is zoned Industrial-1, inside the corporate limits of Raleigh and has the P.I.N. # of 0793.07-68-6726.

To allow a telecommunication tower taller than 250 feet in any zoning district, the City Council must make the 14 findings as stated in §10-2145. With the requirement to record a plat which provides the subject property with public street frontage, staff has found that the site plan meets all required conditions for approval with the exception of condition #14 for which City Council may take into account the testimony at the hearing to make a final determination. The City Clerk has been notified of the request, and an Evidentiary Hearing is to be scheduled for September 2, 1997. Attached are the findings prepared by staff for City Council review.


George B. Chapman
Planning Director

GBC/mm

cc: City Clerk

STAFF FINDINGS

Special Use Permit to allow a telecommunication tower in all zoning districts except Conservation Buffer.

§10-2145(b)(1) Radio and television or similar reception for adjoining properties will not be disturbed or diminished.

FINDING: The applicants have stated that radio, television or similar reception for adjoining properties will not be disturbed or diminished because of the technical specifications of the Personal Communications Systems frequency as licensed and enforced by the FCC.

§10-2145(b)(2) The height of the tower does not exceed five hundred ten (510) feet.

FINDING: The applicants state that the proposed maximum tower height is 300 feet.

§10-2145(b)(3) The lighting of the tower does not exceed the minimum standard of the Federal Aviation Administration (FAA) for red obstruction lighting system contained in Advisory Circular No. 70/7460-IF dated 27 September, 1978, as the same may be amended.

FINDING: Applicants state that obstruction marking and lighting not required by FAA.

§10-2145(b)(4) The minimum yard setback from the outside dimensions of the tower, not from guy anchors, are as follows:

a. Twenty (20) feet from the property line of any adjoining lot or lot across a public street which is vacant and zoned a nonresidential district or any adjoining lot or lot across a public street which is developed without a dwelling, congregate care or congregate living structure, unless increased by subparagraph b. or c. below.

b. One hundred (100) percent of the tower height, but no less than than fifty (50) feet, from the property line of either any lot which is developed at an average residential density of less than fifteen (15) dwelling units per acre or vacant lot located in a residential zoning district.

c. Fifty (50) percent of the tower height from the property line of any lot which is developed at an average residential density equal to or greater than fifteen (15) dwelling units per acre.

The setbacks required by subsections b. and c. above shall not be applicable to any residential dwelling(s) that is not a permitted use in the zoning district, or the residence of a caretaker or watchman accessory to as permitted industrial use.

For towers exceeding a height of two hundred fifty (250) feet, this setback may be reduced by the City Council upon a finding that the lesser setback will not be injurious to property or improvements in the affected area, but in no case shall the setback be reduced to less than fifty (50) percent of the tower height.

The provisions in this subsection are supplemental to the yard regulations in §10-2075 and do not lessen or diminish those regulations.

FINDING:

The proposed site plan conforms to all setback requirements and are as follows:

400.00'± from the south property line.

109.00'± from the east property line.

394.00'± from the west property line.

57.00'± from the north property line.

Because this proposed site is located in an area zoned Residential-20 along the southern property line, the tower setback is 100% of the tower height. The remaining zoning for the adjacent properties is as follows: Industrial-1 along the western property line, Shopping Center along the northern property line, Office and Institutional-1 along the eastern property line. The setbacks required for the nonresidential landuse and zoned properties is 20 feet.

§10-2145(b)(5)

The base of the tower and each guy anchor are surrounded by a fence or wall at least eight (8) feet in height unless the tower and all guy anchors are mounted entirely on a building over eight feet in height. Except for fence and wall entrances, all fences and walls shall be screened with plant material so that no more than two-thirds of the surface of the fence or wall is visible, within three (3) years after the erection of the structure, from a public street or from any adjoining lot which contains a dwelling, congregate care or congregate living structure, or is zoned a residential district.

FINDING:

Applicants state that this self supporting tower will be surrounded by an eight foot high chain link fence, topped with barbed wire, and existing vegetation of "hollywood junipers" will be used as

screening to comply with the requirements of this section. Staff finds this to be in compliance with the screening requirements of this section.

§10-2145(b)(6)

The area adjoining street rights-of-way shall contain a minimum street protective yard of twenty (20) feet wide as measured perpendicular to the public street rights-of-way. This street protective yard shall comply with the requirements of subsections 10-2082.5

In addition to this street protective yard, a transitional protective yard which contains the same plantings required in §10-2082.9 for low impact uses shall be installed within all the yard areas required in subparagraph (4) above, which adjoin a lot containing a dwelling, congregate care or congregate living structure, or zoned residential district. The installation of any fence, wall, planting or earthen berm shall not reduce or lessen this requirement. In instances where a telecommunication tower is locating on a developed lot in accordance with §10-2088 of this Code, and the existing physical development on the lot precludes the full installation of the aforementioned protective yards, the City Council may approve an alternate method of compliance as set forth under the conditions of §10-2082.4 of this Code.

FINDING:

Applicant states the required street yard will be provided as alternate means of compliance as one of three options:

1. Plant six (6) 4" caliper oak trees in the Western Boulevard right-of-way, contingent upon North Carolina Department of Transportation approval of an encroachment agreement.
 2. Donate an amount equal to two (2) times what it would cost to install six (6) 4" caliper oak trees to the Urban Street program.
 3. Remove 20 feet of parking lot along western Boulevard and plant six (6) 2" caliper oak trees.
- Staff finds that any one of these options are adequate to meet the requirements of this section provided that a option is approved prior to issuance of building permits for the tower.

§10-2145(b)(7)

The output power from the tower shall not exceed federally approved levels for exposure to electronic magnetic force (EMF).

FINDING:

Applicant states that the power output will not exceed federally approved levels for EMF exposure.

§10-2145(b) (8)

If determined by the City that the proposed tower is situated in a location which will benefit the City's telecommunications systems, then, the tower shall be engineered and constructed to accommodate the additional telecommunicating equipment beneficial to the public system.

FINDING:

Applicant states that the tower is to be designed to accomodate additional users. They also state that should the City of Raleigh relocate its telecommunications systems, the proposed tower will be able to accomodate a reasonable number of facilities.

§10-2145(b) (9)

If the proposed tower is located on property that is zoned a residential district at the time of the special use hearing, the tower shall be either less than seventy-five (75) feet in height or located no closer than one thousand and five hundred (1,500) feet (determined by straight line and not street distance) to tower greater than seventy-five (75) feet in height which was constructed after August 6, 1995.

If the proposed tower is located on property that is zoned a nonresidential district at the time of the special use hearing, the tower shall be either less than one hundred (100) feet in height or located no closer than one thousand (1,000) feet to a tower greater than one hundred (100) feet in height which was constructed after August 6, 1995.

The City Council may approve the construction of a tower which does not meet the above standards if evidence is provided which demonstrates that reasonable effort has been made to lease space on an exisitng tower or that no existing tower will technically satisfy the applicant's specific needs.

FINDING:

There are no towers constructed after August 6, 1995 within 1500 feet of this site.

§10-2145(b) (10)

If the tower is located within an Hisoric Overlay District or Metro Park Protection Overlay District, the tower does not exceed the maximum allowable building height allowed within the overlay zoning district.

FINDING:

The location of this tower is outside the boundaries of any Historic Overlay District or Metro Park Protection Overlay District.

§10-2145(b) (11) If the tower is between one hundred (100) feet and one hundred and eighty (180) feet in height, the tower shall be engineered and constructed to accommodate a minimum of on two (2) telecommunication providers. If the tower exceeds a height of one hundred and eighty (180) feet, the tower shall be engineered and constructed to accommodate a minimum of three (3) telecommunication providers.

FINDING: Applicant states that this tower will be engineered to allow for co-location.

§10-2145(b) (12) The exterior appearance of all buildings located in any residential district look like a residential dwelling, including without limitation, pitched roof(s) and frame or brick veneer construction.

FINDING: Applicant states that with this tower system, it is not located within a residential district. Staff finds that this tower location is within an area zoned nonresidential with a non residential landuse.

§10-2145(b) (13) Associated buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.

FINDING: Staff finds that the proposed tower and current landuse is not in conflict with this section of the Code.

§10-2145(b) (14) The use will not be detrimental or injurious to property or improvements in the affected area.

FINDING: City Council may take into account testimony at the evidentiary hearing in determining the conformance of the request to this condition.

EXHIBIT 3

**CAPITOL BROADCASTING'S
WAIVER OF CONFLICT OF INTEREST**

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, N.C. 27605

MICHAEL D. HILL
Vice President/General Counsel
(919) 821-8730
Fax (919) 821-8733
Internet:
hillmcd@interpath.com

September 5, 1997

Thomas A. McCormick, Jr.
City Attorney
City of Raleigh
Post Office Box 590
Raleigh, NC 27602

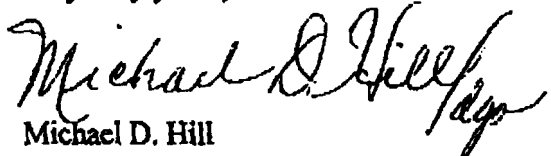
Re: Capitol Broadcasting Company Application for Special Use Permit

Dear Mr. McCormick:

Capitol Broadcasting Company hereby waives any conflict of interest that may be raised as a result of pending litigation in which Capitol Broadcasting Company and various members of the City Council are parties. Capitol Broadcasting Company hereby requests that the above-referenced matter be placed on the next City Council agenda for resolution and that the individual members of the City Council who are parties to that litigation participate in the resolution of the above-referenced matter. Capitol Broadcasting Company will not base any appeal of an adverse decision by the City Council, in whole or in part, upon any allegations of conflict of interest, appearances of impropriety, or any other reason that arises out of or in connection with the on-going litigation.

Thank you for your consideration in this regard.

Very truly yours,


Michael D. Hill

MDH/dgo

cc: Mr. John Greene

[Legal/Share:MWG-P-CBC-McCormick/ty]